

NO. 86-1581

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1986

Supreme Court, U.S.  
FILED

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LAWRENCE NEUMANN

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

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ON PETITION FOR A WRIT CERTIORARI  
TO THE APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

---

BRIEF FOR RESPONDENT IN OPPOSITION

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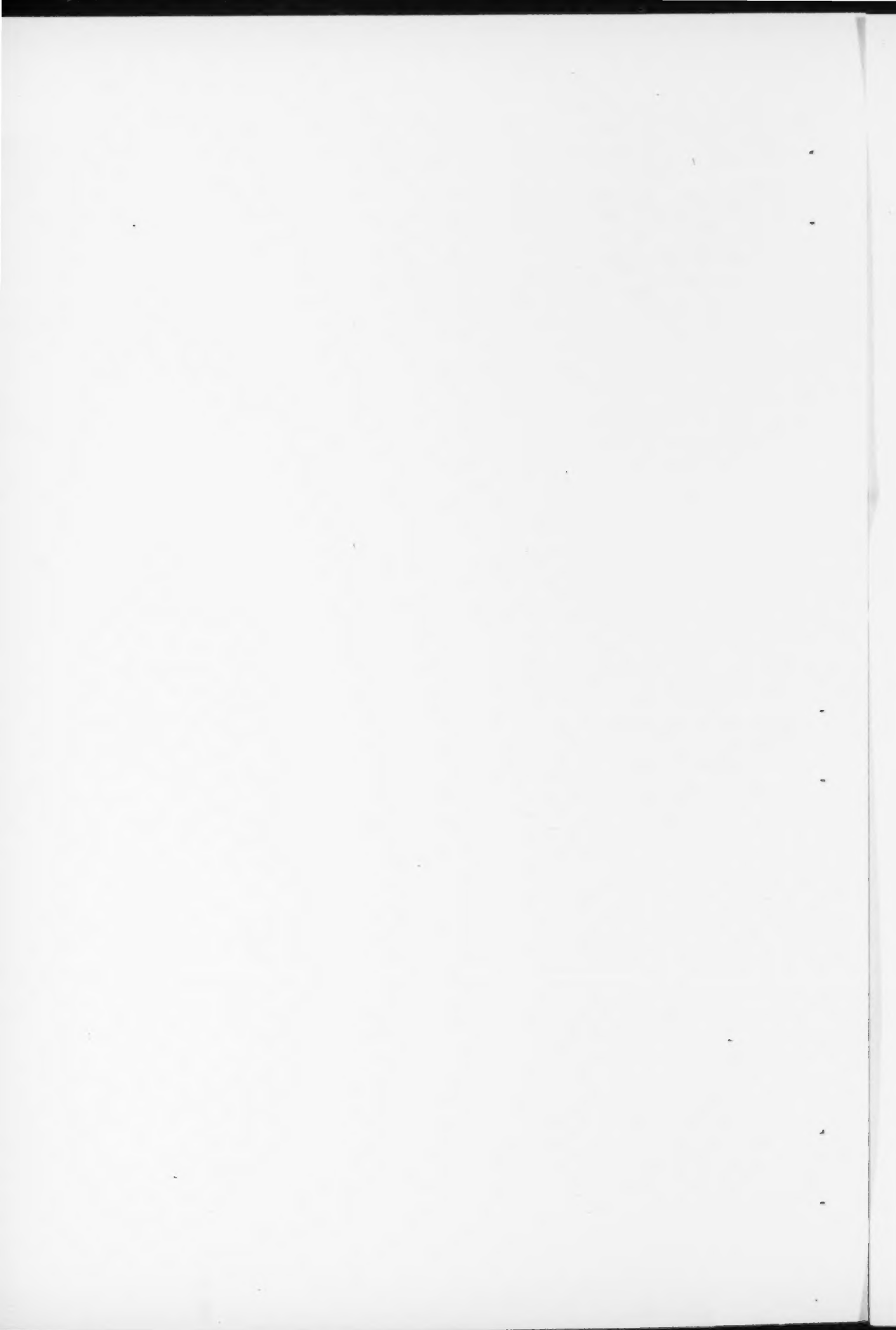
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## QUESTIONS PRESENTED FOR REVIEW

Whether defendant received his right to a speedy trial where he was not in state custody until several days before trial and where he insisted on availing himself of a 30-day waiting period to delay his eventual delivery into state custody.



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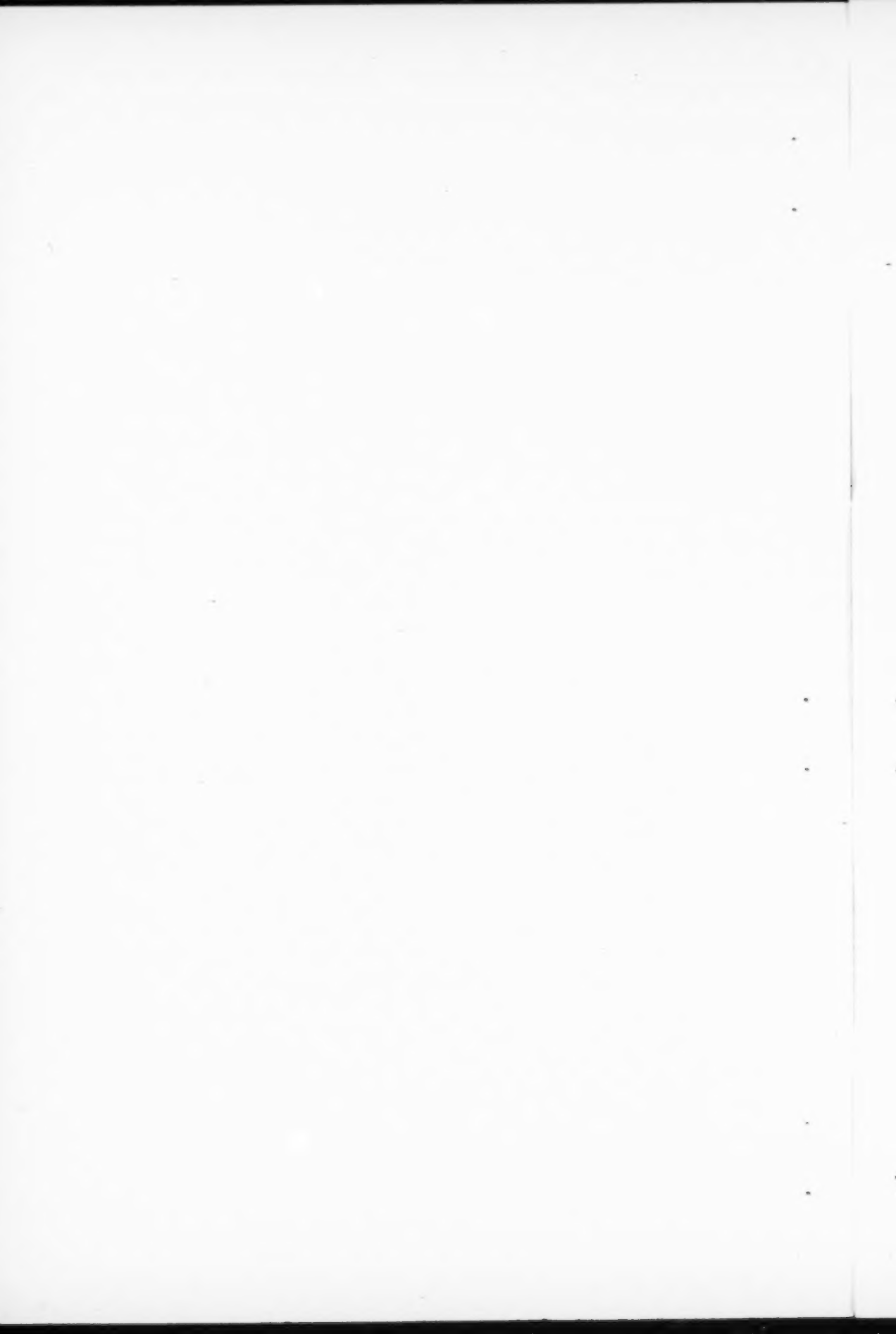
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OPINION BELOW

The order of the Appellate Court of Illinois, First District, affirming defendant's conviction of murder was issued as a published opinion on August 27, 1986. It appears at Appendix A of the Petitioner's Petition for a Writ of Certiorari and at 148 Ill. App. 3d 362, 499 N.E.2d 487. The Illinois Supreme Court denied Leave to Appeal on February 6, 1987.



## JURISDICTION

The jurisdictional requisites have been set forth in the Petition for Writ of Certiorari. However, as treated more fully within the following argument, the respondent believes that the petition has failed to show any good reason for this Court to exercise jurisdiction to review the judgment in question by writ of certiorari.





## STATEMENT OF THE CASE

Defendant Lawrence Neumann was indicted in October, 1982, along with Wayne Matecki for murder while committing armed robbery, felony murder, burglary and conspiracy. The incident giving rise to these charges took place in September, 1979, when defendant and Matecki robbed, beat, strangled and stabbed to death a Chicago jeweler, Robert Brown.

The jury convicted defendant of murder, murder while committing burglary and murder while committing armed robbery. Following the penalty phase, the jury found defendant eligible for the death penalty but could not unanimously recommend imposition of the penalty. Thereupon Judge Gillis sentenced defendant to a term of natural life imprisonment. The Appellate Court of



Illinois affirmed and the Surpeme Court of Illinois denied leave to appeal. Defendant now appeals.

The facts as they relate to the action have been set forth in the Petition for Writ of Certiorari and in the Appellate Court Opinion attached to that Petition. Thus, pursuant to Supreme Court Rules they will not be repeated here.



REASON FOR DENYING THE  
PETITION FOR WRIT OF CERTIORARI

DEFENDANT RECEIVED HIS  
RIGHT TO A SPEEDY TRIAL WHERE  
HE WAS NOT IN STATE CUSTODY  
UNTIL SEVERAL DAYS BEFORE  
TRIAL AND WHERE HE INSISTED ON  
AVAILING HIMSELF OF A 30-DAY  
WAITING PERIOD TO DELAY HIS  
EVENTUAL DELIVERY INTO STATE  
CUSTODY.

Defendant contends that he was  
denied his right to a speedy trial where he  
was arrested by Chicago Police on November  
12, 1982 while awaiting sentencing in federal  
custody but was not tried until March 14,  
1983. The People maintain that defendant  
received his right to a speedy trial where he  
was not actually in state custody until  
several days before trial. Furthermore, by  
availing himself of the 30-day waiting period



provided in the Interstate Agreement on Detainers defendant waived any claim that he should have been tried within 120 days of his arrest.

On November 12, 1982, defendant was incarcerated in the Metropolitan Correctional Center in Chicago awaiting sentencing on federal weapons charges. At this time defendant was arrested and brought in the custody of federal marshalls to Cook County Circuit Court for arraignment. (R. 2805) Defendant was then returned to the federal facility in the custody of the federal marshalls. Defendant was finally sentenced on the federal charges on November 15, 1982. (R. 2596) Defendant himself admitted that he remained in federal custody at the Metropolitan Correctional Center until March 1983 at which time he was transferred into actual state custody. (R. 16) Defendant's





first trial in this cause commenced March 14, 1983. (R. 3)

The 120 day period in which to try a defendant under the Illinois Speedy Trial Act comes into play when the defendant is "taken into custody" on a charge for which he is later tried. Ill. Rev. Stat. 1982, ch. 38, sec. 103-5(a). Clearly defendant was in federal, not state custody when arrested and up until just days before the trial commenced. Indeed this case is remarkably similar to People v. Dye, 59 Ill. 2d 298, 371 N.E.2d 630 (1977) where the court found that, since federal marshalls accompanied defendant on each and every visit to court and housed him in city jail rather than county jail, defendant was never in even temporary custody of Illinois authorities. However, defendant seems to feel that he was in the "constructive custody" of state officials who



were using the federal authorities to hold defendant for them. Such a claim is contrary to Illinois law.

In People v. Davis, 97 Ill. 2d 1, 452 N.E.2d 525 (1983), the court held that a defendant held in custody in one county on an unrelated offense will not be considered to be "in custody" in the second county until the first proceedings have ended, even where defendant is served with a warrant, a hold or detainer is lodged, or he is brought before a court in the second county while still in custody of the first county where the original charges are still pending. Regardless of when a defendant is served with an arrest warrant, he is not "in custody" of the second county until the proceedings in the first county have terminated. People v. Gardner, 105 Ill. App. 3d 103, 433 N.E.2d 1318 (5th Dist. 1982); People v. Akins, 132



Ill. App. 2d 1033, 270 N.E.2d 107 (3d Dist. 1971). In Akins, the defendant was in jail in Will County and a detainer from Kankakee County was lodged against him. There the court held that the 120-day period began when Kankakee County authorities took defendant from Will County on complaint and warrant. However, in Akins, the defendant was in jail pending trial in Will County and was, therefore, not available for immediate prosecution in Kankakee. In People v. Kerley, 72 Ill. App. 3d 916, 391 N.E.2d 225 (2d Dist. 1979) the court found that a defendant is considered "in custody" in connection with a second county's charges on the date judgment and sentence of the first county's charge is entered. The court reasoned that the second county's detainer lodged with the Cook County jail was sufficient to place the defendant in custody



upon the date of sentencing, as no obstacle would exist to trying defendant in the second county. But in People v. Karr, 68 Ill. App. 3d 1040, 386 N.E.2d 927 (2d Dist. 1979), the court found that defendant is not "in custody" of second county until the proceeding against him in the first county is terminated and he is then either returned to, or held in custody for, the second county.

In the case at hand, defendant was in custody of one jurisdiction, the Federal government, when arrested by a second jurisdiction, the State of Illinois on November 12. The federal proceedings had not yet terminated and would not terminate until after November 15, when defendant was sentenced. Thus, under the rationale of the above-cited cases, the very earliest time defendant would be considered in custody for this offense was November 15. Yet there is





no evidence in the record that defendant was at the time being held for the Illinois authorities instead of awaiting further proceedings in the many federal prosecutions in which he was involved. However, inquiry into such issues is essentially moot since defendant was tried beginning March 14, 1983 which was 119 days after November 15 when defendant was actually sentenced on the federal charge. Thus, defendant was tried within 120 days of being taken into custody and the Speedy Trial Act was complied with.

In his brief on this point, defendant relies on People v. Fosdick, 36 Ill. 2d 524, 224 N.E.2d 242 (1967) to claim that defendant should have been considered in state custody from the date of his arrest. However, in Fosdick, Champaign County officials voluntarily relinquished custody of defendant to another county, dropped pending



charges against defendant and then later refiled identical charges after the other county's ended. The Illinois Supreme Court found that Champaign County's attempt to evade the speedy trial statute deprived defendant of his rights. In two later cases, the Supreme Court has held that the ruling in Fosdick is limited to its facts which clearly showed evasion and the court would not extend the rationale. People v. Davis, 97 Ill. 2d 1, 452 N.E.2d 525 (1983); People v. Bixler, 49 Ill. 2d 328, 275 N.E.2d 392 (1971). In the case at hand, there is absolutely no evidence of evasion in the record. In short, the Illinois Courts in this case correctly interpreted and applied well-settled Illinois law on the Speedy Trial Act.

In order to be entitled to trial within 120 days of arrest, a defendant generally must be in custody in Illinois.



People v. Terlikowski, 83 Ill. App. 2d 307, 227 N.E.2d 521 (3d Dist. 1967). If a defendant is serving a term of imprisonment in another state or in a federal correctional institution then the Uniform Agreement on Detainers Act (Ill. Rev. Stat. 1982, ch. 38, sec. 1003-8-9) applies. People v. Merryfield, 83 Ill. App. 3d 1017, 404 N.E.2d 907 (2d Dist. 1980).

At a February 10, 1983 hearing, Richard Krasneck, a legal technician with the Federal Bureau of Prisons, testified that he handles various legal documents including detainers which are filed with the Metropolitan Correctional Center in Chicago. (Supp. 3) Krasneck stated that a warrant in the instant case was lodged against defendant, then serving a 10 year Federal sentence, on January 20, 1983. (Supp. 4) Pursuant to the lodging of this detainer,



Krasmeck read defendant his rights under the Detainer Act, and defendant signed a form acknowledging such rights. (Supp. 5) Defendant was informed that he could demand a final disposition in this case if he so desired. (Supp. 6) However, defendant never requested a final disposition in this case. (Supp. 11) To the contrary, defendant chose to rely on the 30 day waiting period in the Detainer Act before he could be delivered into state custody. (Supp. 12) While claiming to demand a speedy trial, defendant chose not to waive his 30 day waiting period and therefore delayed his entry into state custody. After the 30 day period has run, it takes about 2 to 3 weeks to do the necessary paperwork before defendant is actually delivered into state custody. (Supp. 16) Here, defendant's waiting period commenced when the arrest warrant became lodged against





him on January 20, 1983. Defendant's 30 day period was therefore over on February 20. With 2 to 3 weeks of paper work to handle this meant defendant would arrive in State Custody in mid-March. This is exactly what happened as defendant himself admitted on March 14, 1983, when he stated he was in federal custody until just a few days before this date. (R. 16)

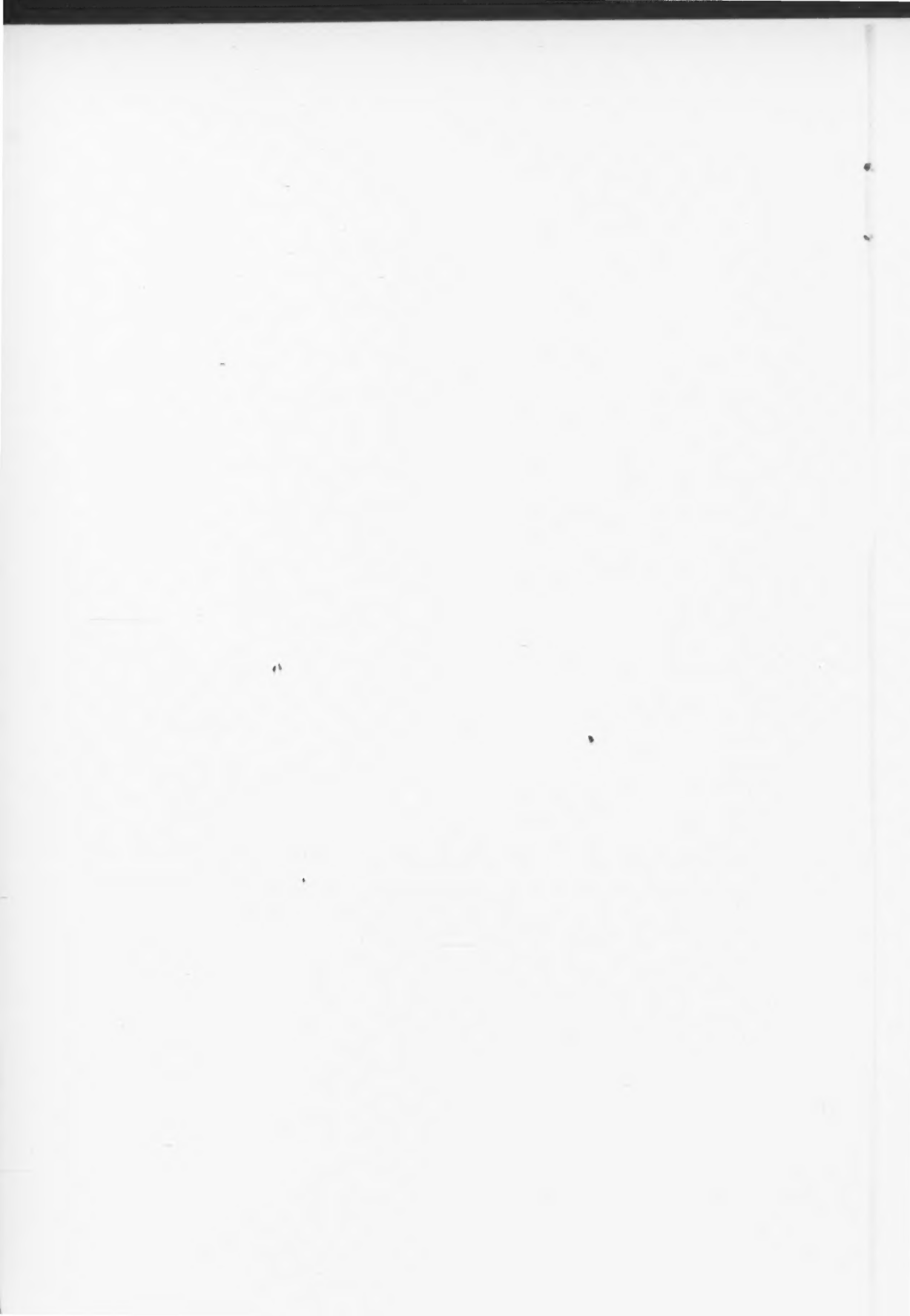
It is axiomatic that for speedy trial purposes, where a delay is attributable to the defendant, the statute is suspended. People v. Christensen, 102 Ill. 2d 321, 465 N.E.2d 93 (1984). Here defendant took the inconsistent position of demanding trial while at the same time refusing to waive the 30 day waiting period provisions of the Detainer Act. On February 10, Judge Gillis ruled that the 120 day period would be extended 30 days due to defendant's delaying tactics. As the trial court found:



Really, under the situation here, to look at it, there is practically no effect way to bring Mr. Neumann back, while we are in this 30-day period, which we are now in and we will be in until February the 20th, which would be two or three days after the expiration of the 120-day period.

We have a situation here where the defendant, Mr. Neumann, is requesting and demanding trial. The State is willing and anxious to go to trial. The State may not - - cannot get Mr. Neuman here because of the 30-day waiting period.

Again, Mr. Neumann has not waived. I find that this failure to waive the 30-day waiting period is a delay attributable to him. I believe that the additional time the State would have is that 30-day period for filing paperwork, I cannot find attributable to the defendant Neumann, so, in short, I will rule that the term has an additional 30 days. (Supp. 30)



Furthermore, as the trial judge pointed out, the People stood ready to go to trial on the original scheduled trial date of February 18, 1983, a date well within the statutory 120 days. (Supp. 31) Only defendant's attempt to create a conflict between the Detainer Act waiting period and the Speedy Trial Act 120 day period prevented the People from trying defendant on the originally scheduled date.

Although the statutory requirement for speedy trial is not coextensive with the safeguards guaranteed by the State and federal constitutions, compliance with the statute usually operates to prevent constitutional questions from arising since the constitutional safeguards protect only against arbitrary and unreasonable delays. People v. Baskin, 38 Ill. 2d 141, 230 N.E.2d 208 (1967). In United States v. MacDonald,



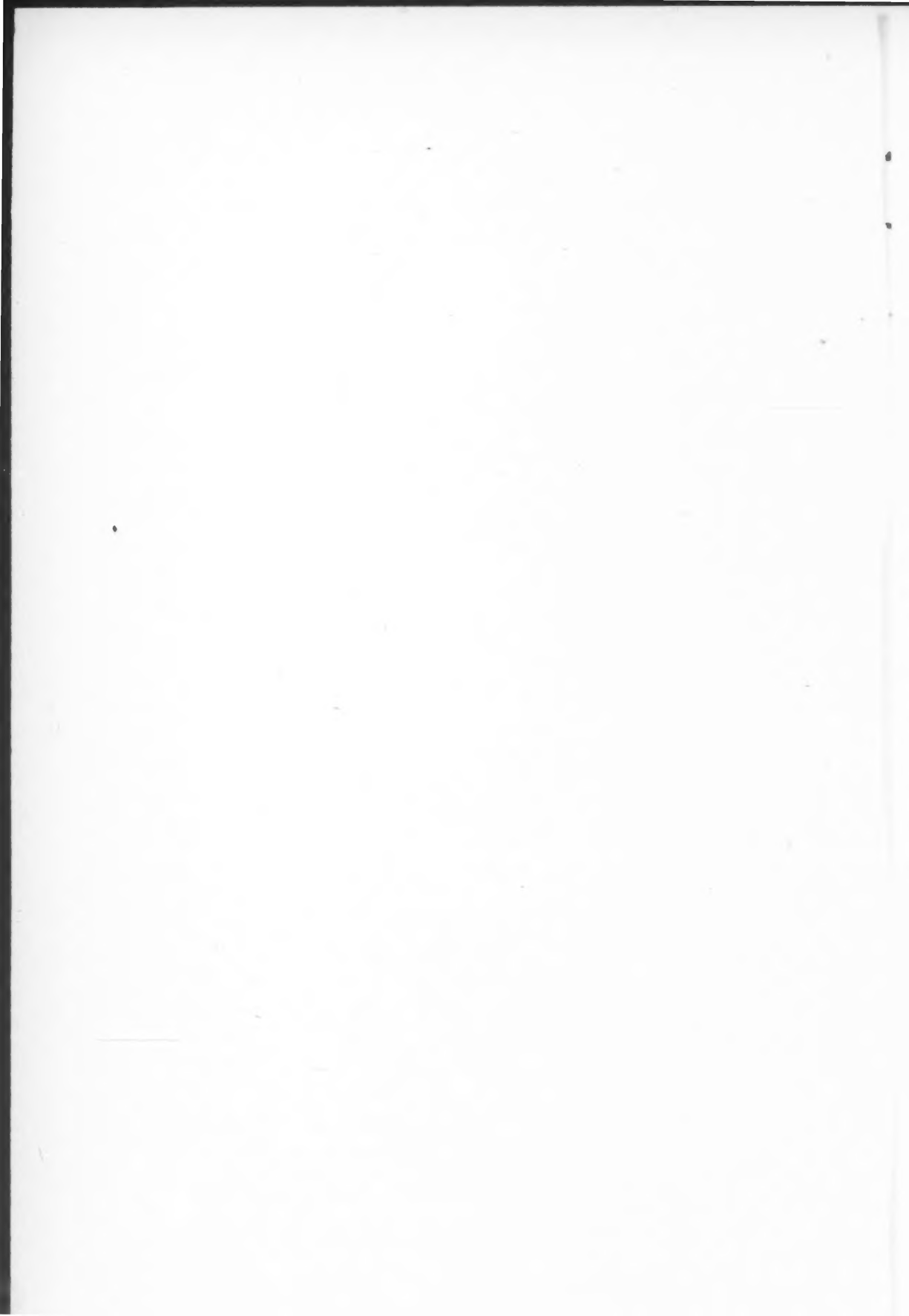
435 U.S. 850, 56 L.Ed.2d 18, 98 S.Ct. 1547 (1978), this Court listed four factors in determining whether defendant has been deprived of his constitutional right to a speedy trial. The first factor is the length of the "delay" in bringing defendant to trial. Here, defendant was tried within 122 days of being arrested and only 119 days after being sentenced on federal crimes. The second factor is the reason for the delay. Here, as shown above, defendant's own actions in attempting to use the Detainer Act as a dilatory tactic served to delay his trial. The third factor is whether defendant asserted his right. Here, defendant ostensibly demanded trial while actually trying to prevent being delivered into State custody so such trial could begin. Finally, it must be determined whether defendant was prejudiced by the delay. Prejudice to the





defendant in turn must be considered in light of the interests the speedy trial right was designed to protect. As set out in Baker v. Wingo, 407 U.S. 514, 33 L.Ed.2d 101, 92 S.Ct. 2182 (1972), these factors are (i) prevention of oppressive pretrial incarceration - not a problem here as defendant's various federal sentences necessitated his incarceration notwithstanding the existence of this case; (ii) minimization of defendant's anxiety and concern-again, if this were a concern with the defendant, he could have waived the Detainer Act waiting period; and (iii) limitation of the possibility that defendant's defense will be impaired - yet defendant here is unable to show how his actions have been impaired through the passage of several weeks time.

In short, the defendant was never in custody of the State of Illinois until



just days before the trial and any claimed delay in trying defendant is being tried came as a result of his own dilatory tactics. Defendant therefore received the benefit of his constitutional right to a Speedy Trial.



## CONCLUSION

The People of the State of Illinois respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

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